

ALL-CHANNEL TELEVISION RECEIVERS

APRIL 9, 1962.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HARRIS, from the Committee on Interstate and Foreign Commerce, submitted the following

R E P O R T

[To accompany H.R. 8031]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 8031) to amend the Communications Act of 1934 in order to give the Federal Communications Commission certain regulatory authority over television receiving apparatus, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows (in terms of the bill, as reported):

On page 1, beginning with line 6, strike out all down through line 4 on page 2 and insert in lieu thereof the following:

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

On page 2, line 12, strike out "I" and insert "I".

On page 2, line 15, strike out "Trading In Apparatus Described in Section 303(S)", and insert in lieu thereof "Prohibition Against Shipment of Certain Television Receivers".

On page 2, line 18, insert "(a)" after "Sec. 330.".

On page 2, line 18, strike out "trade or".

On page 2, line 22, strike out "minimum performance capabilities" and insert "rules".

On page 2, line 23, insert "the authority granted by" after "pursuant to".

On page 2, line 25, strike out "it." and insert "it.".

On page 3, beginning with line 1, insert the following:

(b) For the purposes of this section and section 303(s)—

(1) The term "interstate commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B) commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.

(2) The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but does not include the Canal Zone.

PURPOSE OF LEGISLATION

The purpose of this bill is to authorize the Federal Communications Commission to require that all television receivers shipped in interstate commerce or imported into the United States be equipped at the time of manufacture to receive all television channels; that is, the 70 channels in the UHF portion of the radio spectrum, as well as the 12 in the VHF portion.

NEED FOR LEGISLATION

The Federal Communications Commission has allocated space in the radio spectrum sufficient to accommodate a total of 2,225 television stations. Of these, 1,544 would be UHF stations and 681 VHF stations. At present, 103 UHF stations and 500 VHF stations are actually on the air. This means that only 7 percent of the potential UHF assignments are in use.

If the American people are to have the chance to enjoy the benefits of television service to the fullest degree, then a major portion of the UHF channels not now assigned must be put into operation.

The principal reason why UHF has not been able to develop successfully thus far has been the scarcity of television receivers which are capable of receiving stations operating on UHF channels. There are approximately 55 million television receivers in the hands of the public. However, only about 9 million of these, or about 16 percent, are capable of receiving UHF television signals. Moreover, the overwhelming bulk of television set production is limited to VHF only sets and the situation has been steadily becoming worse. In 1953 over 20 percent of the television receivers were equipped at the time of manufacture to receive UHF. In 1961, only about 6 percent of the receivers produced were so equipped.

This scarcity of UHF receivers clearly places UHF stations at a crippling disadvantage with competing VHF stations. As a consequence, advertisers naturally prefer VHF outlets with assured audiences. For the same reason, the networks prefer to affiliate with VHF stations where they are available.

This scarcity of UHF receivers, therefore, has been, in large part, responsible not only for the fact that relatively few UHF stations have dared to go on the air, but also for the fact that 100 licensees who did take a chance in UHF have had to give up and "go dark."

PRESENT AND FUTURE OF TELEVISION

The goal which is being sought is a television system which will serve all the people, encourage local outlets, foster competition—particularly in the larger markets—and meet educational needs.

Commercial television

The present situation amounts to this: The country is divided into 278 television markets; 127—or almost half of these markets—have only 1 television station; 70—or about one-fourth—are 2-station markets; 57 are 3-station markets; and 24 are markets with 4 or more stations. Therefore, under the industry marketing terms, almost three-fourths of the television markets have a choice of only one or two stations.

The significance of the market figures is this: Our present system is limited by the allocation structure to no more than three national networks—no matter how many entrepreneurs may be willing to enter the commercial field or how much demand or need there may be for additional network service. Indeed, one of the present three networks is under some handicap because of the second figure (70 markets are limited to two stations) and, therefore, that network is unable to secure primary affiliates in these markets. Further, the opportunity for outlets which would be available particularly for local programing and self-expression is severely restricted in many markets because all of the available stations are network affiliates.

The goal is thus a commercial television system which will (1) be truly competitive on a national scale by making provision for at least four commercial stations in all large centers of population; (2) provide at least three competitive facilities in all medium-sized communities; and (3) permit all communities of appreciable size to have at least one television station as an outlet for local self-expression.

Educational television

At present 92 VHF and 189 UHF channels are reserved for educational broadcasting. In order to establish the future need for educational television channels, approximately 700 of the leading colleges and universities were queried, along with all of the major city school systems and the 50 State school systems, and a significant number of smaller school districts in the United States.¹ The results were definite as to the increasing needs of education, and as to the degree in which the educational community at all levels believes television instruction in some form can meet those needs. There was overwhelming evidence that in the next decade or so educational television will play a significant part in helping education to meet the impact of increasing school populations, and in providing the kind of quality education essential to a democratic people in the space age. Further, educational television will provide a much needed source of cultural and informational programing for all audiences, including adult listeners during the evening hours.

¹ See hearings, pp. 456 and 485.

Compilation of the data derived from the national study showed a minimum need for 97 VHF and 825 UHF channels to be added to the presently reserved channels to meet the needs of education in the years ahead. This means, in short, that the minimum needs of education projected from a grassroots level, college by college and school system by school system, throughout this country will require at least 1,197 television channels for open broadcast, in addition to any closed-circuit systems which might be used. It is obvious that all-channel television receiver legislation, by promoting the development of UHF, will greatly benefit educational television whose future and expansion will largely depend on the successful development of UHF broadcasting. Even in areas where there is extensive commercial VHF service, the all-channel television receiver legislation will promote the development of educational television broadcasting. This legislation also ties in with legislation provided for in S. 205 and H.R. 132 which has passed both Houses of the Congress and would provide grants-in-aid for the acquisition and installation of television transmission apparatus for certain educational television broadcasting stations.

ALL-CHANNEL RECEIVER LEGISLATION ONLY MEANS TO ACHIEVE ADEQUATE TELEVISION SYSTEM

Your committee has conducted extensive hearings on this legislation. It has become completely convinced that all-channel receiver legislation is not only the best but the only practical way of achieving an adequate commercial and educational television system in the United States.

The Federal Communications Commission has had under study alternative methods of achieving an adequate commercial and educational television system. Some of these methods contemplated expansion of the number of VHF channels allocated for television broadcasting. Negotiations were undertaken looking toward the possibility of obtaining additional frequencies for television use in the VHF and lower UHF portions of the radio spectrum. It was concluded, however, by the Department of Defense and the Office of Civil Defense Mobilization that substantial reassignment of Government services now occupying portions of the spectrum which have been considered for a contiguous band of VHF channels would not only involve excessive costs but additionally would unduly disrupt defense resources.

Another method contemplated a 70-channel-UHF-only system. But the Commission rejected this approach because (1) it would involve tremendous dislocation and (2) the Commission is convinced that there is a definite need to utilize both UHF and VHF television channels.²

After considering all of these alternatives, the Commission concluded that the fulfillment of the objectives of an adequate national television system can be achieved only through the utilization of the 82 channels now allocated for television broadcasting.

² Another method of promoting UHF operations was suggested to the committee. It would require each commercial VHF station to operate a parallel UHF station in the same community. The committee is convinced that such proposals would not provide the public with a significant amount of additional television programming, but rather would hinder or block the introduction of new and different commercial television services and the full development of educational television facilities in these communities. It would not be in the public interest to waste valuable frequencies by using them to duplicate either in whole or in large part VHF commercial service.

Your committee completely and without reservation concurs in this conclusion of the Federal Communications Commission. This conclusion has also received the fullest support of the Nation's educational and commercial broadcasters.

Experience to date has demonstrated conclusively that a television system limited primarily to 12 VHF channels is entirely inadequate for the Nation's needs.

The present situation which leaves unused 93 percent of available UHF television channels results in an inexcusable waste of one of the most valuable and limited natural resources to which this Nation and other nations have access—the radio spectrum. If these channels continue to remain unused for television purposes it may ultimately lead to making this invaluable and limited natural resource available for other purposes, and many potential industrial users are now clamoring for such reallocation of these unused channels. All of the 82 channels allocated for television use, however, will be required if the goal of an adequate educational and commercial television system is to be achieved. The proposed all-channel television legislation is the only workable method by which this goal can be achieved.

Unless the public has sets that can receive UHF as well as VHF, prospective UHF stations will not be able to reach the audiences necessary for effective operation and UHF stations will be deterred from coming into being. Yet, without UHF stations in operation, the public lacks the incentive to buy sets capable of receiving both UHF and VHF. This is true especially since a VHF-only set can be bought for slightly less money (about \$25) than an all-channel set. Until this vicious circle is broken and the public has a sufficient number of all-channel sets, the satisfactory development of commercial and educational UHF television will remain impeded. For 10 years this circle has not been broken, with the result that VHF channels constitute the principal foundation of our present educational and commercial television system. It is clear, therefore, that the time has come for the Congress to enact appropriate legislation to break this circle so that UHF television can be developed in the public interest. The legislation reported by your committee providing the needed authority for the Commission is the legislation needed to accomplish this objective.

Receivers' all-channel capability

The legislation reported by the committee would authorize the Federal Communications Commission to require that all television sets "be capable of receiving" all television channels. The quoted language contemplates that all receivers shipped in interstate commerce or imported will be constructed with equipment inside its cabinet which will have performance characteristics sufficient to permit satisfactory and usable reception of each of the present 12 VHF and 70 UHF channels in any location where, in the light of the normal state of receiver development at the time, such reception can be expected. The performance capabilities of such sets for receiving UHF signals should be adequate to assure that the purchasers of these sets will in fact get comparable reception from UHF and VHF stations.

The committee has very carefully considered the proposal that the Commission be authorized to prescribe minimum performance capabilities for all-channel television sets. The committee has not

included any such authority in the legislation because at this time the committee is not persuaded that it is necessary in the public interest to involve the Commission in the details of television set manufacturing. Nor is it the committee's intention that the Commission should have the authority to prescribe such standards on the basis of any of its existing powers under the Communications Act. The committee desires to make it very clear, however, that by "all-channel television sets" we mean television receiving sets capable of effectively receiving all channels. Any set which is not capable of performing as contemplated by this legislation and this report should be regarded as being a fraud on the public. After promulgation of appropriate rules by the Commission pursuant to the first section of the bill, the shipment of any such set would be in violation of section 2 of the bill and subject to the sanctions and penalties provided for in the Communications Act of 1934.

CONSTITUTIONALITY OF LEGISLATION

In reporting favorably this legislation, your committee has not overlooked the question of the constitutionality of the legislation. Your committee does not have any doubt but that the legislation is a constitutional exercise of congressional powers under the commerce clause of the Constitution. Television receivers as well as other technical devices designed to transmit and receive radio communications by whatever means science may develop, are instrumentalities of commerce, and thus subject to regulation by the Congress.

This view is supported by a detailed opinion on this question submitted for the record (Hearings, p. 124) by the General Counsel of the Federal Communications Commission. This view is likewise supported by an opinion furnished by the Deputy Attorney General, Byron R. White, under date of February 15, 1962, in answer to a request for such an opinion submitted by the chairman of the Communications Subcommittee, Committee on Commerce, U.S. Senate.³

DEINTERMIXTURE POLICY

In 1952, the Commission adopted a nationwide intermixed VHF-UHF allocation structure for television. On the basis of hindsight it is clear that this structure has led to the creation of the very problems with which this legislation proposes to deal. In attempting to cope with some aspects of these problems in a patchwork manner, the Commission developed a policy of selective deintermixture. In other words, the Commission sought to encourage UHF by selecting certain communities and to provide in those communities for more effective local competition through the device of making these communities all UHF communities instead of intermixed VHF-UHF communities.

The Commission has stated categorically that it does not conceive of deintermixture as a general or long-range solution for the television allocations problem. On the contrary, the Commission stresses that an intermixed television system using both UHF and VHF channels will be needed to achieve our long-range goal of an effective national television system, and that all-channel receiver legislation is the key to that long-range goal.

³ See app. A.

Your committee wholeheartedly agrees with the Commission that a long-range policy of developing an 82-channel VHF and UHF television system should be followed. In order to implement this policy your committee urges the enactment of all-channel receiver legislation. Vice versa your committee feels equally strongly that the pursuit of the Commission's earlier short-range policy of selective deintermixture should be held in abeyance until the effectiveness of the long-range policy can be assessed.

In order that there might be no doubt as to your committee's views on the policies which are to be followed in an attempt to develop an adequate commercial and educational television system in the United States, specific questions as to these policies have been asked of the Commission and the Commission has answered these questions in writing. The committee's questions and the Commission's letter of March 16, 1962, may be found in appendix B and constitute an integral part of the legislative history of this legislation.

In its letter, in which Commissioners Minow, Hyde, Bartley, Craven, Ford, and Cross concurred, the Federal Communications Commission represented to the committee its judgment that deintermixture is not a long-range solution for the television allocations problem, that a combined VHF-UHF system is needed, that if all-channel receiver legislation is enacted by this Congress, the Commission would not proceed with the eight deintermixture proceedings initiated on July 27, 1961, and that, on the contrary, a sufficient period of time should be allowed to indicate whether the all-channel receiver authority would in fact achieve the Commission's overall allocations goal of a satisfactory system of intermixed UHF and VHF assignments. Further, the Commission represented that it would make periodic reports to the committee and that before undertaking any further application of any policy of deintermixture, the Commission would advise the committee of its plans and give the committee an appropriate period of time to consider such plans.

Your committee urges adoption of this legislation in the light of the representations made by the Commission.

Under this legislation time will have to be allowed for the Commission to issue rules to implement the legislation and for manufacturers to convert to production of all-channel receivers. Substantial time will have to elapse thereafter before a large majority of the public becomes equipped with all-channel receivers so that the effectiveness of the legislation can be determined. There are now some 55 million television sets in the United States and annual sales are at the rate of about 6 million. Thus, the moratorium means that the Commission's moratorium with respect to deintermixture will be in effect for 5, 6, or 7 years, or, more likely, an even longer period of time, after the date of enactment of all-channel legislation until the effectiveness of the legislation has had a reasonable chance to prove itself.

In accordance with the written representations of the Commission, the moratorium does not apply to existing deintermixture proceedings other than the eight proceedings referred to in the Commission's letter. There are four other deintermixture proceedings referred to in detail in the appendix to the Commission's letter in the case of which the Commission may find it necessary to go forward with such proceedings and to reach a decision in these cases which the Commission determines to be in the public interest under the particular facts existing

in the proceedings. In deciding these cases, however, the committee expects the Commission to give proper weight to the congressional policies set forth in this report. Furthermore, the committee notes the Commission's statement that in deciding these particular cases it will give great weight to any loss of service to the public which would result from the abandonment of VHF channels allocated to the particular communities involved in these cases.

SUPPORT FOR LEGISLATION

The legislation has the unanimous and enthusiastic support of the Federal Communications Commission. As a matter of fact the Commission testified that it considers this legislation the most important part of the Commission's legislative program. Many Members of Congress testified in person in favor of this legislation which implements the Congress' and the Commission's long-range policy of developing an 82-channel television system and which thus assures continuation of existing VHF services in communities and areas where loss of such services was threatened by the Commission's deintermixture policy.

The legislation further has the active support of the broadcasting industry, including the television networks. The most enthusiastic support for this legislation, perhaps, comes from the thousands of viewers who may be threatened with complete loss of television service if the only available VHF service were to be discontinued and less far-reaching UHF service substituted. Numerous persons and community leaders have pleaded with the committee not to let this happen, and the committee is gratified that the all-channel receiver legislation will assure continuation of existing VHF services.

It should be noted that a witness appearing for the Consumer Products Division of the Electronic Industries Association testified in opposition to the legislation. The record shows, however, that several television manufacturers, including some of the largest manufacturers in the industry, support the all-channel television legislation.

CONCLUSIONS

The Congress and the Commission have sought a solution to the difficult television allocations problem which has existed since 1953. Practically all segments of the broadcasting industry, the Commission, and all others who have studied this problem most intensely, now agree that this legislation is the only practical way of obtaining the benefits of an all-82-channel television system.

Your committee has weighed carefully all of the arguments in favor of and against this legislation. It has come to the conclusion, which is supported by the overwhelming majority of the committee members, that this legislation is the only practical means by which an adequate commercial and educational television system can be put into effect in the United States. True enough, the consumer will have to pay a slightly higher price, at least initially, for all-channel sets. Experience has demonstrated, however, that mass production of electronic equipment results in substantial price reductions to the consumer, and the committee does not expect this case to be an exception. Even at a slight increase in price, the investment in all-channel receivers will be

well worth the cost if this is the only way in which the American people can be assured of the benefits of television service to the fullest degree. Therefore, your committee urges the prompt adoption of this legislation.

EXPLANATION OF COMMITTEE AMENDMENTS

The first committee amendment rewrites proposed section 303(s) which would be added to the Communications Act of 1934 by the bill. As rewritten, section 303(s) authorizes the Federal Communications Commission, as public convenience, interest, or necessity requires, to require that television receiving sets shipped in interstate commerce, or imported into the United States, for sale or resale to the public be capable of receiving all frequencies allocated by the Federal Communications Commission to television broadcasting. The bill as introduced would also have authorized the Commission to prescribe minimum performance capabilities for such television receiving sets.

The committee amendments also add definitions of "interstate commerce" and "United States" as a subsection (b) to proposed section 330. These definitions would apply only with respect to sections 303(s) and 330, both of which would be added to the Communications Act of 1934 by the bill.

ADDITIONAL VIEWS

As members of the Committee on Interstate and Foreign Commerce, we do not wish to file a minority report expressing any antagonism to the general purposes of all-channel receiver legislation. We hope, and expect, that the purposes of such legislation will result in the accomplishment of a wider television coverage, wider selection of channels, and, thus, the promotion of a greater UHF listening audience. However, we would not detract from the service, the investment, the pleasure or education resulting from VHF transmission in the television field. We must protect, preserve, and promote that effort also.

These views are additional views emphasizing the feeling of many of the committee on such subjects as (1) the desirability of having television sets with all-channel receivers, (2) the undesirability of regional deintermixture at this time when the impact in the future, as well as the result of experiments in programing are not known, and (3) the economic impact on any shift in television, on an area basis, on a local basis, or on a national basis to UHF. Thus, we discuss this legislation in the light of our feeling and our beliefs.

GENERAL PURPOSE

We of the committee share with the Federal Communications Commission its "firm conviction that the public interest requires use of all 82 channels allocated for television." The general purpose of the legislation is to foster the further development and expansion of commercial and educational television broadcasting in the public interest by requiring that all television receivers shipped in interstate commerce or imported into the United States be equipped to receive all 82 channels now allocated to television, including the present 12 VHF channels (channels 2-13) and the present 70 UHF channels (channels 14-83).¹ This requirement with respect to television receivers is designed to encourage and facilitate operation of UHF stations intermixed with VHF stations in the same communities and areas and to prevent the impairment of existing VHF and UHF commercial and educational television service to the public.

As of March 1962, television stations were operating on 500 of the 681 available VHF television channel allocations (73 percent) but on only 103 of the 1,544 available UHF television channel allocations (7 percent). Of 274 television channels reserved for education, only 60 (42 VHF and 18 UHF) were in operation. The extensive hearings conducted by the committee make clear that the single most important reason for the failure heretofore to utilize more of the available UHF channels to provide educational and commercial television service to the public is the fact that only a relatively small proportion of the television sets which have been produced since the 70 UHF channels

¹ These channels occupy the frequencies 54-72 megacycles (channels 2-4), 76-88 megacycles (channels 5-6), 174-216 megacycles (channels 7-13), and 470-890 megacycles (channels 14-83).

were first allocated for television in 1952 have been capable of receiving the 70 UHF channels in addition to the 12 VHF channels. Of all sets produced in the period 1953 to 1961, inclusive, less than 13 percent have been equipped at the manufacturing plant to receive UHF. Although UHF set production was 20 percent of total production in 1953, by 1961 it had fallen sharply to only 6 percent of total production.

Unless the public has sets that can receive UHF as well as VHF, prospective commercial and educational UHF stations will not be able to reach the audiences necessary for effective operation and UHF stations will be deterred from coming into being. Yet, without UHF stations in operation, the public lacks incentive to buy sets to receive both UHF and VHF, especially when a 12-channel VHF set can be bought for a little less. Until this ring is broken and the public has sufficient numbers of all-channel sets, the ordinary development of commercial and educational UHF television will remain impeded. For 10 years the ring has not been broken by any technique. All other feasible approaches having been unproductive, it is apparent to us that the time has come for the Congress to enact appropriate all-channel set legislation to break the ring so that UHF can be developed in the public interest.

THE POLICY OF SHIFTING VHF STATIONS TO THE UHF

We are strongly of the view that it would be unsound and contrary to the public interest for operating VHF stations to be shifted to UHF channels. UHF channels are normally capable of providing television service over areas which are substantially smaller than the areas which can be served by VHF channels. In addition, even within the areas which UHF channels can serve, UHF signals are more variable and tend to be poorer than VHF signals, due in large part to the fact that foliage, hills, buildings, and other obstructions absorb or obstruct UHF signals. For reasons such as these, shifting VHF stations to UHF channels would result in losses of existing television service to the public. In large part these losses of service will occur in rural, farm, outlying, and sparsely settled areas where there is little or no prospect of economic support for new stations to replace the service which would be lost through shifts of existing VHF stations to UHF. We feel our entire committee is strongly opposed to any action that would take television service away from the public.

THE REPRESENTATIONS OF THE COMMISSION

We have closely followed the proposals of the Federal Communications Commission, issued in its dockets Nos. 14229 and 14239-14246 on July 27, 1961. A number of these proposals would involve, or be directly related to, the shift of VHF stations to UHF channels. In the Commission's notices in these proceedings these proposals were closely related to the Commission's request that the Congress enact all-channel receiver legislation. During the extensive hearings held by the committee there was widespread and vigorous opposition to the shifting of VHF stations to the UHF. Although we strongly support all-channel receiver legislation, we also firmly oppose the shift of VHF

stations to UHF. Hence, we would be unwilling to recommend enactment of this legislation without satisfactory assurance that VHF television stations will not be shifted to UHF, in whole or in part.

Because of our deep concern with the Commission's proposals to shift VHF stations to UHF, and the relationship of all-channel receiver legislation to such proposals, our able committee chairman specifically inquired of the Commission whether it would proceed with proposals to shift VHF stations to UHF if all-channel receiver legislation were enacted. The Federal Communications Commission has represented to the committee, in a letter dated March 16, 1962, in which Commissioners Minow, Hyde, Bartley, Craven, Ford, and Cross concurred, that deintermixture is not a solution for the television allocations problem, that a combined VHF-UHF system is needed, that if all-channel receiver legislation is enacted by this Congress, the Commission would not proceed with the eight deintermixture proceedings initiated on July 27, 1961, and that, on the contrary, a sufficient period of time should be allowed to indicate whether the all-channel receiver authority would in fact achieve the Commission's overall allocations goal of a satisfactory system of intermixed UHF and VHF assignments. Further, the Commission represented that it would make periodic reports to the committee and that before undertaking the implementation of any policy concerning deintermixture, the Commission would advise the committee of its plans and give the committee an appropriate period of time to consider such plans.

This legislation is being recommended on the basis of our understanding of the Commission's representations as follows:

(1) That the Commission would not even consider directly or indirectly requiring shifting any VHF station to a UHF channel without the licensee's consent before it is determined from experience how all-channel receiver authority is working out. Time will have to be allowed for the Commission to issue rules to implement the legislation and for manufacturers to convert to production of all-channel receivers. Substantial time will have to elapse thereafter before the vast majority of the public becomes equipped with all-channel receivers so that the effectiveness of the legislation can be determined. There are now some 55 million television sets in the United States and annual sales are at the rate of about 6 million. Thus, the committee understands the Commission's representation to mean that consideration will not even be given to shifting any VHF station to a UHF channel without its consent for a period of at least 9 years, and possibly longer, after the date of enactment of all-channel legislation.

(2) That even after the passage of at least 9 years when a vast majority of the public has acquired all-channel receivers, the Commission would not undertake indirectly or directly to shift any VHF station to a UHF channel without the consent of the licensee (a) until the Commission has first advised this and other interested committees of the Congress of any such plan and its reasons therefor so that the committee may consider them, and (b) until each such committee has notified the Commission that it has had an appropriate period of time to consider the Commission's plan and is contemplating no action which, in its judgment, warrants further deferral of the plan.

It is in specific reliance upon these representations by the Commission that the committee is reporting favorably all-channel receiver legislation. We feel that the committee regards these representations

as binding on the Commission as now constituted and as it may in the future be constituted.

RECEIVER ALL-CHANNEL CAPABILITY

The legislation reported by the committee would require that all television sets "be capable of receiving" all television channels. The quoted language contemplates that all receivers shipped in interstate commerce or imported will be constructed with equipment inside its cabinet which will have performance characteristics sufficient to permit reasonably satisfactory and usable reception of each of the present 12 VHF and 70 UHF channels (in any location where, in the light of the normal state of receiver development at the time, such reception could be reasonably expected) without the necessity of adding further equipment other than an appropriate antenna.

We have very carefully considered the proposal that the Commission be authorized to prescribe minimum performance standards for all-channel television sets. The committee has declined to report favorably any such provision because it is not persuaded that it is necessary in the public interest to involve the Commission in the details of television set manufacturing. Nor is it our intention that the Commission could prescribe such standards through its existing power to issue rules or regulations or otherwise. We have made very clear in the preceding paragraph that by "all-channel television sets" we mean "all-channel television sets." We would regard any set which is not capable of performing in the manner described above as being a fraud on the public and we would regard its shipment as being in violation of section 2 of this bill and subject to all the sanctions and penalties of any other violation of the Communications Act.

DUAL UHF-VHF OPERATIONS

It has been suggested to the committee that each commercial VHF station be required to operate a parallel UHF station in the same community. A proposal for dual UHF-VHF operations by the same commercial licensee was made by the Commission in its Notice of Proposed Rule Making in docket No. 14229, adopted on July 27, 1961. We are convinced that such proposals are contrary to the public interest. It could not reasonably be expected that such operations by commercial licensees would provide the public with a significant amount of television programming on the UHF channel which was not available simultaneously, and throughout a larger area, on the VHF channel. Moreover, it would be expected that the more desirable UHF channels, and not infrequently all the UHF channels, in each community would be tied up in parallel commercial UHF-VHF operations if this approach were followed. This would hinder or block the introduction of new and different commercial television services and the full development of educational television facilities in these communities. In this latter connection it will be noted that witnesses of educational organizations testified that there is a need for a total of approximately 1,000 UHF channels to be reserved for education—825 in addition to the 184 now reserved. In other words, meeting educational needs alone would appear to require two-thirds of the total number of UHF frequencies assigned to television. We cannot

afford to waste these frequencies by using them to duplicate VHF commercial service either in whole or in large part.

CONCLUSION

We have, in the statements above set forth, reduced to writing what we believe is the expressed intent of a majority of the members of the committee in accepting H.R. 8031 as all-channel receiver legislation without specific reference to our legislation emphasizing the undesirability of original deintermixture under the FCC dockets Nos. 14229 and 14239-14246. We felt that these additional views should be presented in order that there be no question but that the Commission's letter of March 16, 1962, was received in good faith by the committee and that we expect good faith from the Commission and its successors.

All of which is respectfully submitted.

KENNETH A. ROBERTS,
Fourth District, Alabama.

ROBERT W. HEMPHILL,
Fifth District, South Carolina.

APPENDIX A

U.S. SENATE,
COMMITTEE ON COMMERCE,
February 15, 1962.

HON. BYRON R. WHITE,
*Deputy Attorney General,
Department of Justice, Washington, D.C.*

DEAR MR. WHITE: I have enclosed copies of S. 2109, a bill introduced on June 20, 1961, by Senator Magnuson at the request of the Federal Communications Commission, and the Commission's justification therefor. This bill would give the Commission certain regulatory authority over television receiving apparatus and will be the subject of a hearing before the Subcommittee on Communications of the Senate Commerce Committee on February 20, 1962.

We realize that the general subject of this bill is not a matter of specific concern to the Department of Justice. But the Department will be called upon to prosecute all necessary court proceedings, both civil and criminal, for the enforcement of the bill's provisions. See sections 401, 501, and 502 of the Communications Act of 1934, as amended (47 U.S.C. 401, 501, 502).

We are most interested in obtaining the Department's views as to the constitutionality of the bill, since such constitutional questions may arise in court proceedings involving the bill's provisions.

In view of the February 20 hearing date, we would appreciate a prompt reply, and, if possible, on or before February 20.

Sincerely yours,

JOHN O. PASTORE,
Chairman, Communications Subcommittee.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
March 19, 1962.

HON. JOHN O. PASTORE,
*Chairman, Communications Subcommittee,
Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your letter of February 15, 1962, inviting this Department to comment upon S. 2109, particularly with respect to certain constitutional questions which may arise under the measure.

S. 2109 would amend sections 303 and 330 of the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.). The amendment to section 303 would add a new subsection (s) which would confer authority upon the Federal Communications Commission to prescribe minimum performance capabilities for television receivers to be traded or shipped in interstate commerce or imported into the United States for public sale. The amendment to section 330 would forbid the trad-

ing or shipping in interstate commerce or the importation into the United States of television receivers which do not comply with the minimum performance capabilities prescribed by the Commission pursuant to section 303(s). The prohibition would not apply to carriers who simply transported the receivers.

It is our understanding that the Commission would use the authority to be conferred upon it to require that television receivers manufactured for interstate commerce, or imported, after some specific date in the future be capable of receiving on ultra high frequency channels as well as on the present very high frequency channels.

The Department of Justice has certain responsibilities for the enforcement of the Communications Act of 1934. Under section 401(a) (47 U.S.C. 401(a)), the Attorney General, upon request by the Federal Communications Commission, may bring mandamus proceedings to enforce the provisions of the act; under section 401(b), he may seek injunctions in the Federal district courts to enforce the orders of the Commission; and under section 401(c) U.S. attorneys, under the direction of the Attorney General and at the request of the Commission, bring all necessary proceedings for enforcement of the act. Section 501 of the act (47 U.S.C. 501) provides penalties for willful acts or omissions in violation of the requirements or prohibitions of the act; and section 502 (47 U.S.C. 502) imposes fines of \$500 a day upon persons who willfully violate regulations imposed by the Commission under authority of the act.

Your letter noted that constitutional questions might arise in court proceedings conducted by this Department in performance of its responsibilities under the act. We have reviewed the matter and conclude that the Department could successfully resist any contentions that the provisions of S. 2109 are unconstitutional.

The issue of constitutionality conceivably could be raised as a defense in proceedings under sections 401, 501, and 502 by persons violating regulations issued by the Commission under proposed section 303(s) or by persons who had shipped in interstate commerce receivers manufactured in violation of regulations under section 303(s).

On the basis of our review of the authorities, we believe that the Congress has all the necessary power under the commerce clause of the Constitution (art. I, sec. 8, clause 3) to authorize the Federal Communications Commission to prescribe minimum performance capabilities for television receivers.

By its very nature, the spectrum available for electromagnetic transmission is limited. This results in a ceiling on the number of channels which can be utilized for television. In order to obtain the greatest television service possible, expansion must be in the direction of more efficient utilization of the television spectrum. The vast majority of the available television channels is in the UHF portion (70 out of 82). Notwithstanding this, most of the television broadcasting stations are crowded into the VHF channels. A major reason why the 70 UHF channels are only sparsely occupied is the scarcity of television receivers capable of tuning to UHF frequencies. This is fundamentally inconsistent with the allocation of 82 channels for television broadcasting and the national need for full utilization of those channels. The purpose of the bill is to remedy this undesirable situation, and the only constitutional question is whether the means proposed by the bill are appropriate to achieve the end sought.

The transmission of intelligence among the States, by whatever means science may develop, is an element of commerce within the regulatory power of the Congress (*Pensacola Tel. Co. v. Western Union Tel. Co.*, 96 U.S. 1, 9). There has never been any serious question as to the power of the Congress to regulate electronic communication, for "[n]o State lines divide the radio waves, and national regulation is not only appropriate but essential to the efficient use of radio facilities" (*Radio Comm'n v. Nelson Bros. Co.*, 289 U.S. 266, 279).

The Supreme Court has recognized this in cases considering the technology of radio broadcasting (*Fisher's Blend Station v. Tax Comm'n*, 297 U.S. 650, 654) and of electric telegraphy (*Western Union Tel. Co. v. Foster*, 247 U.S. 105). In the latter case, a receiving instrument, a telegraphic stockbroker's ticker, was held to be part of interstate communications. Further, the Court has held that the gathering and dissemination of national news and advertising are interstate commerce, so that both newspapers and radio stations circulating such information on a local basis are, nevertheless, within the scope of the commerce clause (*Lorain Journal Co. v. United States*, 342 U.S. 143).

Under the criteria of these cases, television receivers are obviously instrumentalities of interstate commerce. This is clear from the technological role they play in the process of communication from television studio to television viewer: it is only when the receiver translates the modulations emanating from the transmitter into sound and light that the process of electronic communication is completed (cf. *Fisher's Blend Station v. Tax Comm'n*, *supra*; *Western Union Tel. Co. v. Foster*, *supra*.) This communication is national in scope; that there may be some local transmissions does not defeat the essentially interstate character of the process. Indeed, the Congress has left no room whatever for local regulation of television broadcasting because such regulation would be inconsistent with effective control of interstate activity (*Allen B. Dumont Laboratories v. Carroll*, 184 F. 2d 153 (C.A. 3); certiorari denied, 340 U.S. 929). Moreover, the television receiver, like the local newspaper and the local radio station in the *Lorain Journal* case, serves as a device for the dissemination of national news and national advertising. Thus it is an instrumentality of commerce not only for technological reasons but for functional reasons as well.

Since television receivers are instrumentalities of interstate commerce and are therefore within the legislative authority conferred by the commerce clause, the power of the Congress to legislate respecting them is complete and without any limitations except those derived from other portions of the Constitution (*Gibbons v. Ogden*, 9 Wheat. 1, 194-197). It thus is fully within the power of the Congress to legislate for the purpose of encouraging a broader range of facilities for television communication. "The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon" (*Wickard v. Filburn*, 317 U.S. 111, 128).

The fact that standards for the manufacture of television sets would be authorized under S. 2109 does not derogate from the bill's validity. Constitutional power does not turn on whether an activity is "manufacturing" or "production," but on the actual effect of the activity in question upon interstate commerce (*Wickard v. Filburn*, *supra*, at p. 120). Where the regulation of production is regarded by the Con-

gress as a suitable means of controlling an aspect of interstate commerce, it has full power under the Constitution to resort to this procedure (*United States v. Darby*, 312 U.S. 100).

In the *Darby* case, the Supreme Court sustained the constitutionality of legislation barring from interstate commerce goods which had been produced for it under conditions determined by the Congress to be substandard. That reasoning, we believe, would bind the courts in proceedings challenging the validity of the proposed amendments, for such is the nature of television communications today that every receiver is manufactured for interstate commerce, because it is itself an instrumentality of that commerce.

Congress has on other occasions regulated production to protect interstate commerce. For example, no aircraft can qualify to operate in air commerce unless it meets standards as to type, production, and airworthiness established by the Civil Aeronautics Board (sec. 703, Federal Aviation Act of 1958, 72 Stat. 776; 49 U.S.C. 1423).

It is now beyond dispute that Congress has the power to exclude from interstate commerce all goods which do not conform to standards deemed necessary to protect that commerce or encourage its development (*United States v. Darby, supra*). Given this power, the proposed section 330 which would bar from trade or shipment in interstate commerce television receivers not meeting minimum Federal standards under section 303(s) is clearly valid under the commerce clause.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

APPENDIX B

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 16, 1962.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: At the March 6 hearing before your committee on H.R. 8031 and other bills, it was requested that the Commission submit its views on four questions, dealing with the effect of the enactment of all-channel TV receiver legislation on Commission proceedings proposing to deintermix particular areas to all-UHF. The questions and our views thereon are set out below.

1. *Is the Commission in a position to make a representation to the Committee that if legislation providing for all-channel receiving sets is enacted, the Commission would postpone any further consideration of all deintermixture until such time as it could see from experience how the all-channel receiver authority will work out—perhaps 5, 6, 7 years?* (Transcript 201.)

The Commission, after study, has made the following judgment: The Commission would regard enactment by this Congress of the all-channel receiver legislation as a major change in the circumstances affecting its deintermixture proposals and as a major factor to be

considered in determining whether or not the public interest would be served by deintermixing any of the communities now under consideration. As the Commission made clear in its statement of March 6, we do not conceive of selective deintermixture as a general or long-range solution for the television allocations problem. Rather, we believe that we will need a system using both UHF and VHF channels, and that all-channel receiver legislation is the basic and essential key to that long-range goal. For with this legislation, time would begin to run in favor of UHF development. The UHF operator (both commercial and educational) could look forward to UHF receiver saturation not only in his home city but in the surrounding rural area as well, and could expect improvement in the quality of the UHF portion of the receivers in the hands of the public. With increased use of UHF, and increased incentive for both equipment manufacturers and station operators to exploit its maximum potential, there is reason to believe that several of the problems which presently restrict the coverage of UHF stations would be overcome (statement of March 6, pp. 13, 17).

In short, as we stated in our "Notice of Proposed Rule Making" in docket No. 14229, the all-channel receiver is "critically important" because it is directed squarely to "the root problem of receiver incompatibility." It is our hope and belief that the achievement of set compatibility will make possible a satisfactory system of intermixed assignments, and immeasurably promote educational TV (statement of March 6, pp. 20-21). It will enhance the development of three fully competitive network services and perhaps eventually of still further network service. For these reasons, the Commission makes the representation to your committee that if the all-channel receiver TV legislation is enacted by this Congress, it is the judgment of the Commission (with the qualification noted in 4, *infra*) that it would be inappropriate, in the light of this important new development, to proceed with the eight deintermixture proceedings initiated on July 27, 1961, and that, on the contrary, a sufficient period of time should be allowed to indicate whether the all-channel receiver authority would in fact achieve the Commission's overall allocations goals.

The argument has been made that the Commission is not in a position to transmit this judgment to the Congress for two reasons: (1) That such action would contravene the principle set forth in the *Sangamon Valley* decision (269 F. 2d 221 (C.A.D.C.)); and (2) that under the Communications Act, the Commission is required to go forward to a resolution of the deintermixture proceedings on their merits. We do not believe that either argument has merit. As to the second, the Commission has in the past suspended or terminated its processes because of the emergence of new overriding factors not foreseen at the time of institution of those processes. We think such decisions to defer or postpone action fall within the discretion of the Commission (cf. *Coastal Bend Television Corp. v. U.S.*, 234 F. 2d 686 (C.A.D.C.)), subject, of course, to review by the courts to determine whether the action is arbitrary. We regard our position in this instance as wholly reasonable in the light of the considerations set out in the prior paragraph.

As to the *Sangamon Valley* question, the Commission is well aware of its responsibilities under this decision. Thus, as we made clear in our recent testimony before your committee (and were sustained

by the chairman of the committee—see, e.g., transcript 281–282, 285), the Commission cannot and will not take into account nonrecord presentations by interested parties, or those acting on their behalf, as to the issues in the pending proceedings (such as the amount of “white area” that would result from any deintermixture action). But *Sangamon Valley* does not preclude congressional inquiry, in connection with pending legislation, as to possible overall Commission action in the event of enactment of that legislation, nor does it preclude the Commission from supplying to the Congress such information of an overall nature as Congress deems necessary in its consideration of the legislation. The facts of *Sangamon Valley* involve, we believe, the wholly different question of ex parte presentations by an interested party made in the offices of Commissioners on the particular merits of the pending rulemaking proceeding.

In short, we believe that it is wholly proper to transmit this judgment to the committee. We wish to make clear that in doing so we are not foreclosing fair consideration of any further pleadings in these proceedings (such as a petition for reconsideration under sec. 405 of any final order issued by the Commission). Under the law such pleadings must be considered on their merits and they will be so considered. But, in connection with your consideration of pending legislation, you have asked for the Commission’s judgment as to what it would do in the event of enactment of the all-channel receiver legislation by the Congress, and we have given you that judgment.

2. *In connection with the foregoing matter, would the Commission also make the further representation that before any general policy concerning deintermixture would be undertaken at the conclusion of the moratorium period, this committee would be advised?* (Transcript 202.)

The Commission does make this representation. The Commission would give the committee and other interested congressional committees periodic reports during any moratorium period decided upon. Before undertaking the implementation of any policy concerning deintermixture, the Commission would advise the committee of its plans and give it an appropriate period of time to consider the Commission’s proposals.

3. *Would the Commission consider a moratorium written into the law and providing that the Commission will not take any further action looking to deintermixture of an area to all-UHF until the Congress permits such action?* (Transcript 202–203.)

As we understand this proposal, a statutory prohibition against any Commission action shifting a VHF operator to UHF in order to effectuate an all-UHF area would continue until ended by action of both Houses of Congress. The Commission does not favor this approach. For it means, in effect, that if the all-channel legislation proves inadequate, and the Commission feels that some form of deintermixture is desirable in order to achieve the purposes of the Communications Act (e.g., § 1.303(g)), it would have to seek the equivalent of an amendment to the act. In our opinion, such a statutory scheme would render administrative policy inflexible and ineffective.

The Commission hopes and believes that the all-channel legislation will achieve its goal and make possible “a satisfactory system of intermixed assignments” (par. 10, “Notice of Proposed Rule Making,”

docket No. 14229). But if it does not, the agency clearly has the duty to take further action. For such action will have to be based on evaluation of complex economic and engineering factors. It is for this reason—to facilitate action taken after this kind of evaluation—that Congress created the agency. Congress recognized the desirability of delegating to the Commission the task of sifting the factors involved in complex allocations proceedings such as a Sixth Report and Order or a Clear Channel Report and Order. It therefore gave the Commission the broadest flexibility to deal with this dynamic industry (*F.C.C. v. Pottsville Btg. Co.*, 309 U.S. 134, 137–38; *NBC v. U.S.*, 319 U.S. 190, 215–219).

Under this proposal (transcript 202–203), however, the Commission would be stripped of much of its flexibility at the critical period when it was most needed. We fully recognize that in the event the all-channel legislation falls short of achieving its goals, Congress will want to carefully consider any Commission proposals. We would welcome such consideration. But if Congress restricts the Commission's discretion in this vital area, then it must act itself. The responsibility for development of the nationwide television system would then rest with the Congress, and, contrary to sound and well-established tradition and policy, the agency will have only the most limited role and discretion.

For these reasons, we strongly urge that the Commission not be deprived, in this area, of the broad discretion which Congress gave it to meet changing problems and circumstances. We believe that there is no reason for not following the established policy of over a quarter of a century of permitting Commission action under the public interest standard, subject to congressional and judicial review. (See statement of March 6, p. 18.)

4. *With respect to any moratorium would deintermixture proceedings such as the Springfield, Ill., proceedings fall into the same category as the eight deintermixture proceedings proposed last July 27?* (Transcript 320.)

For reasons fully developed in the attached appendix, the Commission believes that any agency moratorium (see 1) on deintermixture to all-UHF would not be applicable to the deintermixture proceedings in (1) Springfield, Ill. (docket No. 14267), (2) Peoria, Ill. (docket No. 11749), (3) Bakersfield, Calif. (docket No. 13608), and (4) Evansville, Ind. (docket No. 11757).

We hope that the foregoing and the attached appendix make clear our views. If, however, your committee has any further questions, we shall be glad to answer them.

Thank you again for permitting us to state so fully our views on this most important matter. We greatly appreciate the committee's efforts on behalf of this legislation (H.R. 8031), so essential to the development of the truly nationwide TV system described in our statement of March 6.

By direction of the Commission: ¹

NEWTON N. MINOW, *Chairman.*

¹ Commissioner Lee maintains his position as set forth in his statement before the committee.

Because of his former connection (prior to nomination as Commissioner) as engineering consultant in regard to the deintermixture of Springfield and Peoria, Ill., Commissioner T. A. M. Craven did not participate in the consideration of the Commission's comments in this letter with respect to those areas. Otherwise, Commissioner Craven concurs with the views of the Commission majority.

APPENDIX

APPLICABILITY OF ANY DEINTERMIXTURE MORATORIUM TO THE SPRINGFIELD, ILL., PEORIA, BAKERSFIELD, AND EVANSVILLE DEINTERMIXTURE PROCEEDINGS

This appendix deals with the applicability of any moratorium on Commission deintermixture action (to all UHF operation) to the deintermixture proceedings in (1) Springfield, Ill. (docket No. 14267), (2) Peoria, Ill. (docket No. 11749), (3) Bakersfield, Calif. (docket No. 13608), and (4) Evansville, Ind. (docket No. 11757). For reasons developed within, the Commission believes that any such moratorium should be inapplicable to these proceedings.

1. *Springfield, Ill., deintermixture proceeding* (docket No. 14267).—On March 1, 1957, the Commission issued an order in the rulemaking proceeding in docket No. 11747, which removed channel 2 from Springfield, Ill., and added it at St. Louis, Mo., and Terre Haute, Ind., and further assigned UHF channels 26 and 36 to Springfield (22 F.C.C. 318). The Commission's order also modified the existing authority of Signal Hill Telecasting Corp., the then licensee of channel 36 in St. Louis, to provide for temporary operation on channel 2. This order was affirmed by the court of appeals (*Sangamon Valley Television Corp. v. U.S.*, 255 F. 2d 191 (C.A.D.C.)), but the Supreme Court remanded the case to the court of appeals for consideration of certain ex parte activities which had occurred during the rulemaking proceedings before the Commission (356 U.S. 49). The court of appeals remanded the case to the Commission for a determination of the nature and source of all ex parte pleas (269 F. 2d 221). The Commission, after ascertaining such pleas, proposed to give interested parties an opportunity to respond to them but not to comment on matters occurring subsequent to March 1, 1957.

On appeal, the Department of Justice took issue with this latter ruling, urging that the Commission must consider post-1957 facts "if it is to reach a proper rulemaking decision as to where the VHF channel 2 should be allocated for the future" (brief, p. 8). The Commission, in its brief, pointed out that "consideration of subsequent events might well have to include existing service to the public in St. Louis * * *" (p. 18). The court agreed with the Department and ordered the Commission "to conduct an entirely new proceeding," based on the facts as they now exist; it further stated that the existing service on channel 2 in St. Louis may be continued by the Commission during this new proceeding (294 F. 2d 742). On September 7, 1961 the Commission instituted the new proceeding (docket 14267).

We have set out this lengthy history to show that the *Springfield, Ill.*, deintermixture proceeding does not stand on the same footing as the eight deintermixture proceedings initiated last July. If a general moratorium prevents deintermixture in these proceedings, it rightly or wrongly maintains the status quo in these areas. But a moratorium precluding deintermixture in Springfield would, as a practical matter, upset the status quo. For, as the court recognized, the facts are that since 1957 Springfield has been all-UHF and channel 2 has been serving the St. Louis area. Without any consideration of the merits of the matter, the moratorium thus would automatically withdraw channel 2 from service in St. Louis (and from assignment

to Terre Haute where, however, it has been the subject of a comparative hearing) and call for VHF operation in Springfield. We think that such an automatic application of a general moratorium is unsound and that the matter rather should be left to the Commission's judgment. And see section 402(h), Communications Act. It may be that in spite of the dislocation we have described, the Commission might conclude in docket 14267 that the public interest would not be served by ordering deintermixture of Springfield. But certainly that decision is one calling for a judgment on the basis of all the public interest factors—and not for automatic application of any general deintermixture moratorium. This conclusion is buttressed by the domino effect of a moratorium precluding deintermixture of Springfield on the Peoria, Ill., deintermixture case, to which we now turn.

2. *Peoria, Ill., deintermixture case* (docket No. 11749).—The Commission in a report and order issued March 1, 1957, deintermixed the Peoria area, substituting a UHF channel for channel 8 which was reassigned to the Davenport-Rock Island-Moline metropolitan area in order to afford "a third VHF outlet in this major market" (docket No. 11749, 22 F.C.C. 342.)¹ On appeal, the court of appeals affirmed the Commission's order (*WIRL Television Co. v. U.S.*, 253 F. 2d 863 (C.A.D.C.)); the case was, however, subsequently remanded to the Commission, not because of any error or because of ex parte factors, but because the Commission's decision was geared, to some extent, to the *Springfield* deintermixture proceeding² and accordingly might be affected by a different decision in that proceeding. Since the Commission is to reconsider the *Springfield* matter, the rulemaking with respect to *Peoria* also was remanded to the Commission, so that it could be reconsidered, if necessary, in the light of the new *Springfield* decision. (See *WIRL Television Co. v. U.S.*, 274 F. 2d 83 (C.A.D.C.).)

This means that if a general moratorium causes the Commission to reject deintermixture of Springfield, the *Peoria* deintermixture action would have to be reconsidered in the light of this new factor. But the same moratorium would prevent the Commission from reevaluating and making a new judgment as to whether *Peoria* should be deintermixed. The actual status quo in *Peoria* would thus be disturbed without any consideration of the merits of the case. It may be that it should be so disturbed. But it may also be that the Commission would not regard a reversal of the *Springfield* picture—referred to only in a footnote in the Commission's *Peoria* decision (see footnote 2, *supra*)—as requiring a different result. Here again, the matter is obviously one for judgment, not rigidity.

3. *Bakersfield, California* (docket No. 13608).—On March 27, 1961, the Commission issued an order deintermixing Bakersfield by substituting UHF 23 channel for channel 10, effective December 1, 1962, or such earlier date as station KERO-TV may cease operation on channel 10 at Bakersfield (21 Pike & Fischer, R. R. 1549). This is final Commission action, with only "formal codification to be accom-

¹ This channel assignment to Davenport-Rock Island-Moline has been the subject of a comparative hearing, which is not yet completed; instructions as to the final decision were announced on June 29, 1961, *Community Telecasting Corp.*, docket No. 12501.

² In a footnote in the *Peoria* report, the Commission stated (22 F.C.C. at 352, note 15): "Our action herein, moreover, comports with our decision in the *Springfield* deintermixture proceeding (docket No. 11747). In that case we have concluded that the public interest would be served by deleting channel 2 from Springfield. A station on this frequency in Springfield would have provided VHF service to parts of the service areas of the UHF stations in Peoria; and conversely a station on channel 8 in Peoria would provide VHF service to portions of the area that will be served by UHF stations in the Springfield-Decatur area, which the Commission believes should be all-UHF."

plished by subsequent order" (21 Pike & Fischer, R. R. 1573). As such, it is appealable and now pending before the court of appeals (*Transcontinent Television Corp. v. U.S.*, case No. 16541, C.A.D.C.). Obviously, any moratorium on deintermixture would and should be inapplicable to this final Commission action.

If, however, the case were remanded to the Commission for any reason, the question would arise whether Commission reconsideration should be precluded by a general moratorium. We believe that it should not. For, reconsideration in such circumstances stands on a different ground than a new proposal for deintermixture in some area (cf. sec. 402(h) of the act). Even more important, a moratorium affecting Bakersfield would leave Commission action in this general area (the San Joaquin Valley) in the state of being half complete, half incomplete, and would have seriously adverse consequences on the development of television in the San Joaquin Valley and particularly in the Fresno area. In Fresno, deintermixture action by the Commission is complete, and Fresno station KFRE-TV has shifted from operation on VHF channel 12 to UHF operation (see F.C.C. 60-814, 60-279). One of the important aims in the *Bakersfield* case was to complement the Fresno action. As the Commission stated (21 Pike & Fischer, R.R. at pp. 1554-56):

"7. The potential for the growth and development of multiple effective local outlets and services in the San Joaquin Valley would be much greater if all television assignments at Bakersfield were in the UHF band. With Bakersfield and Fresno, the two largest expanding population centers of the valley, located about 105 miles from each other, and with their trading and market areas extending into the valley between them, where also are located a number of smaller cities where the chances for the establishment of local television outlets are promising, it is inevitable, under the favorable terrain and propagation conditions in the valley, that there is and will be an overlapping of services and a sharing of a common audience by all stations operating at Fresno and Bakersfield or in cities between them. It has been demonstrated that the relatively flat valley floor presents unusually favorable conditions for propagation of television signals. Marietta itself pointed out in comments filed in docket No. 11759 that the 'unique character of the extremely flat and quite treeless San Joaquin Valley, which permits signals to be rolled down the corridor from Bakersfield toward Fresno and from Fresno toward Bakersfield in the manner of a bowling ball, exceeding substantially the normal propagation distances in other areas, is a phenomenon which cannot be ignored.' By virtue of these circumstances, it is essential, we believe, that we make conditions conducive throughout the valley for the growth and successful operation of local outlets by providing an equal opportunity for all valley stations to compete effectively with compatible facilities."

* * * * *

"10. With our action removing VHF channel 12 from Fresno and shifting station KFRE-TV on that channel to UHF operation, all television assignments and stations in the valley are now in the UHF band with the exception of station KERO-TV on channel 10 at Bakersfield. At the present time only three stations are operating

at Fresno and three at Bakersfield, but there is demand and promise that additional outlets will soon be established at Fresno, and at Tulare, Visalia, and Hanford, which are located in the valley between Fresno and Bakersfield. [Footnote omitted.] The predicted grade B signal of the VHF channel 10 station at Bakersfield (KERO-TV) extends well beyond Tulare, Visalia, and Hanford where local UHF stations are now contemplated, penetrates the service areas of the Fresno UHF stations, and reaches to within 23 miles of Fresno. There can be no doubt, however, that under the excellent propagation conditions in the valley, its signal penetrates even farther north in the valley. The Nielsen coverage survey for the spring of 1958 indicates that station KERO-TV at Bakersfield reaches and is listened to in homes in Madera County, which is north of Fresno County and principally served by Fresno stations. The 1960 American Research Bureau, Inc., television coverage study of California counties and stations indicates that about 96 percent of the television homes in both Tulare and Kings Counties (Tulare and Visalia are in Tulare County and Hanford in Kings County) and about 58 percent of the TV homes in Fresno County are able to receive station KERO-TV and that station KERO-TV's net weekly circulation (number of TV homes viewing station KERO-TV at least once a week) in Tulare County is about 93 percent, in Kings County about 83 percent, and in Fresno County about 30 percent.

"11. Although our removal of the single VHF outlet at Fresno puts all Fresno stations on a comparable competitive footing which we believe will increase the potential for the growth of healthy competitive services in the Fresno area, we cannot agree with Marietta that deintermixture of the Fresno market can be fully effective notwithstanding its VHF station at Bakersfield. With a VHF outlet at Fresno no longer dominating the Fresno market, there is considerable merit, we believe, to the claim of proponents for UHF-deintermixture of Bakersfield that station KERO-TV, as the only VHF station in the valley, would be in a position of conspicuous and unjustifiable dominance over all the competing UHF stations in the valley. This factor and the extent to which station KERO-TV's signal now penetrates beyond cities between Bakersfield and Fresno where the establishment of additional local UHF outlets is the most promising and into the service areas of the Fresno stations convincingly indicate that the presence of this VHF station in the adjacent Bakersfield market constitutes a significant deterrent to effective and comparable UHF competition in the Fresno market area and to the establishment of effective and beneficial new services, particularly in the smaller cities of the valley. The deterrent would be compounded if Bakersfield were made principally all-VHF by the addition of two more VHF outlets, as Marietta suggests, and three Bakersfield VHF stations were to provide service in this now all-UHF area. Complete deintermixture of the entire San Joaquin Valley to UHF is, in our judgment, required for full development and expansion of effective competitive television service throughout the valley."

On this ground also, therefore, Bakersfield should not come within any general deintermixture moratorium but rather should be left to Commission judgment, in the event that reconsideration is called for at some future date.

4. *The Evansville deintermixture proceeding* (docket No. 11757).—On March 1, 1957, the Commission issued a report stating its “judgment that amendment of the Table of Assignments for Television Broadcast Stations (sec. 3.606(b) of the Commission’s rules) by shifting channel 7 from Evansville, Ind., to Louisville, Ky.; assigning channel 31 to Evansville; substituting channel 78 for channel 31 in Tell City, Ind.; shifting channel 9 from Hatfield, Ind., to Evansville where the channel is to be reserved for noncommercial educational use; and by unreserving channel 56 and shifting it from Evansville to Owensboro, Ky., would promote the public interest, convenience, and necessity.” The Commission effected the changes as to channel 9 but not those involving channel 7. Because there was an outstanding authorization for operation of station WTVW on channel 7 in Evansville, the Commission instituted show cause proceedings to modify station WTVW’s permit to specify operation on channel 31.

The Commission’s action shifting channel 9 from Hatfield to Evansville (for noncommercial educational use) was sustained upon review in court (*Owensboro-on-the-Air, Inc. v. U.S.*, 262 F. 2d 702 (C.A.D.C.)). As to the show cause proceeding, the examiner on July 20, 1961, issued an initial decision recommending that channel 7 be deleted from Evansville and reassigned to Louisville and that WTVW’s permit be modified to specify operation on UHF channel 31 (FCC 61D-113). Oral argument on the exceptions to the initial decision will be heard by the Commission on March 29.

Again, we think it apparent that no general moratorium should be applicable to the Evansville area situation. Half the Commission’s action in this area is final (i.e., shifting channel 9 to noncommercial operation); the other half—whether channel 7 should be shifted to Louisville to complete the deintermixture of the area and provide Louisville with a third VHF facility—is nearing final decision after a lengthy adjudicatory proceeding. Clearly the judgment as to whether the public interest would be served by such action should be made by the Commission upon the basis of the voluminous adjudicatory record compiled—and not by automatic application of a general moratorium.

Significantly, Senator Capehart, who opposed deintermixture of Evansville in testimony given before the examiner (par. 95, Init. Dec., FCC 61D-113), concurs in this conclusion. For, while supporting the provision of H.R. 9267 (the Roberts bill) precluding Commission deintermixture, he further stated:

“So that there can be no misunderstanding, I do not take this position in connection with any case that is under adjudication before the FCC. Specifically, my views do not apply to the situation in Evansville where channel 7 has been earmarked for a move for a very long time. The legislative decision in this case was made some years ago. What concerns me is future legislation, or rulemaking decisions. I think it is proper for me to express my views on such matters, while I should be reluctant to do so as to cases under adjudication” (statement before Subcommittee on Communications, Senate Commerce Committee).

APPENDIX C

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**PART I OF TITLE III OF THE COMMUNICATIONS ACT OF 1934,
AS AMENDED**

TITLE III—PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

LICENSE FOR RADIO COMMUNICATION OR TRANSMISSION OF ENERGY

SEC. 301. It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or district; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

SEC. 302. (Repealed June 5, 1936.)

GENERAL POWERS OF THE COMMISSION

SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

(a) Classify radio stations;

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

(l) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens of the United States as the Commission finds qualified, except that in issuing licenses for the operation of radio stations on aircraft the Commission may, if it finds that the public interest will be served thereby, waive the requirement of citizenship in the case of persons holding United States pilot certificates or in the case of persons holding foreign aircraft pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments;

(m)(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) Has violated any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) Has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) Has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) Has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) False or deceptive signals or communications, or

(2) A call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) Has willfully or maliciously interfered with any other radio communications or signals; or

(F) Has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated;

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation;

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party;

(s) *Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of*

receiving all frequencies allocated by the Commission to television broadcasting when such apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

WAIVER BY LICENSEE

SEC. 304. No station license shall be granted by the Commission until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

GOVERNMENT-OWNED STATIONS

SEC. 305. (a) Radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 of this Act. All such Government stations shall use such frequencies as shall be assigned to each or to each class by the President. All such stations, except stations on board naval and other Government vessels while at sea or beyond the limits of the continental United States, when transmitting any radio communication or signal other than a communication or signal relating to Government business, shall conform to such rules and regulations designed to prevent interference with other radio stations and the rights of others as the Commission may prescribe.

(b) Radio stations on board vessels of the United States Maritime Commission or the Inland and Coastwise Waterways Service shall be subject to the provisions of this title.

(c) All stations owned and operated by the United States, except mobile stations of the Army of the United States, and all other stations on land and sea, shall have special call letters designated by the Commission.

FOREIGN SHIPS

SEC. 306. Section 301 of this Act shall not apply to any person sending radio communications or signals on a foreign ship while the same is within the jurisdiction of the United States, but such communications or signals shall be transmitted only in accordance with such regulations designed to prevent interference as may be promulgated under the authority of this Act.

ALLOCATION OF FACILITIES; TERM OF LICENSES

SEC. 307. (a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) The Commission shall study the proposal that Congress by statute allocate fixed percentages of radio broadcasting facilities to

particular types or kinds of non-profit radio programs or to persons identified with particular types or kinds of non-profit activities, and shall report to Congress, not later than February 1, 1935, its recommendations together with the reasons for the same.

(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses, and not to exceed five years in the case of other licenses, if the Commission finds that public interest, convenience, and necessity would be served thereby. In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect. Consistently with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, public interest, convenience, or necessity would be served by such action.

(e) No renewal of an existing station license shall be granted more than thirty days prior to the expiration of the original license.

APPLICATIONS FOR LICENSES; CONDITIONS IN LICENSE FOR FOREIGN COMMUNICATION

SEC. 308. (a) The Commission may grant construction permits and station licenses, or modifications or renewals thereof, only upon written application therefor received by it: *Provided*, That (1) in cases of emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) during a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, or (3) in cases of emergency where the Commission finds, in the nonbroadcast services, that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission may grant construction permits and station licenses, or modifications or renewals thereof, during the emergency so found by the Commission or during the continuance of any such national emergency or war, in such manner and upon such terms and conditions as the Commission shall by regulation prescribe, and with-

out the filing of a formal application, but no authorization so granted shall continue in effect beyond the period of the emergency or war requiring it: *Provided further*, That the Commission may issue by cable, telegraph, or radio a permit for the operation of a station on a vessel of the United States at sea, effective in lieu of a license until said vessel shall return to a port of the continental United States.

(b) All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station; the ownership and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used; and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee under oath or affirmation.

(c) The Commission in granting any license for a station intended or used for commercial communication between the United States or any Territory or possession, continental or insular, subject to the jurisdiction of the United States, and any foreign country, may impose any terms, conditions, or restrictions authorized to be imposed with respect to submarine-cable licenses by section 2 of an Act entitled "An Act relating to the landing and the operation of submarine cables in the United States," approved May 24, 1921.

ACTION UPON APPLICATIONS: FORM OF AND CONDITIONS ATTACHED TO LICENSES

SEC. 309. (a) Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

(b) Except as provided in subsection (c) of this section, no such application—

(1) for an instrument of authorization in the case of a station in the broadcasting or common carrier services, or

(2) for an instrument of authorization in the case of a station in any of the following categories:

(A) fixed point-to-point microwave stations (exclusive of control and relay stations used as integral parts of mobile radio systems),

(B) industrial radio positioning stations for which frequencies are assigned on an exclusive basis,

(C) aeronautical en route stations,

(D) aeronautical advisory stations,
(E) airdrome control stations,
(F) aeronautical fixed stations, and
(G) such other stations or classes of stations, not in the broadcasting or common carrier services, as the Commission shall by rule prescribe,
shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof.

(c) Subsection (b) of this section shall not apply—

(1) to any minor amendment of an application to which such subsection is applicable, or

(2) to any application for—

(A) a minor change in the facilities of an authorized station,

(B) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control,

(C) a license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license,

(D) extension of time to complete construction of authorized facilities,

(E) an authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station,

(F) authorizations pursuant to section 325(b) where the programs to be transmitted are special events not of a continuing nature,

(G) a special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or pending the filing of an application for such regular operation, or

(H) an authorization under any proviso of the clauses of section 308(a).

(d)(1) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which subsection (b) of this section applies at any time prior to the day of Commission grant thereof without hearing or the day of formal designation thereof for hearing; except that with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. The petitioner shall serve a copy of such petition on the applicant. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with subsection (a). Such allegations of fact shall, except for those of which official notice

may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit.

(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a), it shall proceed as provided in subsection (e).

(e) If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

(f) When an application subject to subsection (b) has been filed, the Commission, notwithstanding the requirements of such subsection, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring emergency operations in the public interest and that delay in the institution of such emergency operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such emergency operations for a period not exceeding ninety days, and upon making like findings may extend such temporary authorization for one additional period not to exceed ninety days. When any such grant of a temporary authorization is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.

(g) The Commission is authorized to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

(h) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions

to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 of this Act.

LIMITATION ON HOLDING AND TRANSFER OF LICENSES

SEC. 310. (a) The station license required hereby shall not be granted to or held by—

- (1) Any alien or the representative of any alien;
- (2) Any foreign government or the representative thereof;
- (3) Any corporation organized under the laws of any foreign government;
- (4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;
- (5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted after June 1, 1935, by aliens, their representative, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license.

Nothing in this subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when the installation and use of such apparatus is required by Act of Congress or any treaty to which the United States is a party.

Notwithstanding paragraph (1) of this subsection, a license for a radio station on an aircraft may be granted to and held by a person who is an alien or a representative of an alien if such person holds a United States pilot certificate or a foreign aircraft pilot certificate which is valid in the United States on the basis of reciprocal agreements entered into with foreign governments.

(b) No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby. Any such application shall be disposed of as if the proposed transferee or assignee were making application under section 308 for the permit or license in question; but in acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.

SPECIAL REQUIREMENTS WITH RESPECT TO CERTAIN APPLICATIONS IN
THE BROADCASTING SERVICE

SEC. 311. (a) When there is filed with the Commission any application to which section 309(b)(1) applies, for an instrument of authorization for a station in the broadcasting service, the applicant—

(1) shall give notice of such filing in the principal area which is served or is to be served by the station; and

(2) if the application is formally designated for hearing in accordance with section 309, shall give notice of such hearing in such area at least ten days before commencement of such hearing. The Commission shall by rule prescribe the form and content of the notices to be given in compliance with this subsection, and the manner and frequency with which such notices shall be given.

(b) Hearings referred to in subsection (a) may be held at such places as the Commission shall determine to be appropriate, and in making such determination in any case the Commission shall consider whether the public interest, convenience, or necessity will be served by conducting the hearing at a place in, or in the vicinity of, the principal area to be served by the station involved.

(c)(1) If there are pending before the Commission two or more applications for a permit for construction of a broadcasting station, only one of which can be granted, it shall be unlawful, without approval of the Commission, for the applicants or any of them to effectuate an agreement whereby one or more of such applicants withdraws his or their application or applications.

(2) The request for Commission approval in any such case shall be made in writing jointly by all the parties to the agreement. Such request shall contain or be accompanied by full information with respect to the agreement, set forth in such detail, form, and manner as the Commission shall by rule require.

(3) The Commission shall approve the agreement only if it determines that the agreement is consistent with the public interest, convenience, or necessity. If the agreement does not contemplate a merger, but contemplates the making of any direct or indirect payment to any party thereto in consideration of his withdrawal of his application, the Commission may determine the agreement to be consistent with the public interest, convenience, or necessity only if the amount or value of such payment, as determined by the Commission, is not in excess of the aggregate amount determined by the Commission to have been legitimately and prudently expended and to be expended by such applicant in connection with preparing, filing, and advocating the granting of his application.

(4) For the purposes of this subsection an application shall be deemed to be "pending" before the Commission from the time such application is filed with the Commission until an order of the Commission granting or denying it is no longer subject to rehearing by the Commission or to review by any court.

ADMINISTRATIVE SANCTIONS

SEC. 312. (a) The Commission may revoke any station license or construction permit—

(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308;

(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;

(3) for willful or repeated failure to operate substantially as set forth in the license;

(4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States;

(5) for violation of or failure to observe any final cease and desist order issued by the Commission under this section; or

(6) for violation of section 1304, 1343, or 1464 of title 18 of the United States Code.

(b) Where any person (1) has failed to operate substantially as set forth in a license, (2) has violated or failed to observe any of the provisions of this Act, or section 1304, 1343, or 1464 of title 18 of the United States Code, or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States, the Commission may order such person to cease and desist from such action.

(c) Before revoking a license or permit pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b), the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is involved, the Commission may provide in the order for a shorter period. If after hearing, or a waiver thereof, the Commission determines that an order of revocation or a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds and reasons therefor and specify the effective date of the order, and shall cause the same to be served on said licensee, permittee, or person.

(d) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

(e) The provisions of section 9(b) of the Administrative Procedure Act which apply with respect to the institution of any proceeding for the revocation of a license or permit shall apply also with respect to the institution, under this section, of any proceeding for the issuance of a cease and desist order.

APPLICATION OF ANTITRUST LAWS; REFUSAL OF LICENSES AND PERMITS IN CERTAIN CASES

SEC. 313. (a) All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices enter-

ing into or affecting interstate or foreign commerce and to interstate or foreign radio communications. Whenever in any suit, action, or proceeding, civil or criminal, brought under the provisions of any of said laws or in any proceedings brought to enforce or to review findings and orders of the Federal Trade Commission or other governmental agency in respect of any matters as to which said Commission or other governmental agency is by law authorized to act, any licensee shall be found guilty of the violation of the provisions of such laws or any of them, the court, in addition to the penalties imposed by said laws, may adjudge, order, and/or decree that the license of such licensee shall, as of the date the decree or judgment becomes finally effective or as of such other date as the said decree shall fix, be revoked and that all rights under such license shall thereupon cease: *Provided, however*, That such licensee shall have the same right of appeal or review, as is provided by law in respect of other decrees and judgments of said court.

(b) The Commission is hereby directed to refuse a station license and/or the permit hereinafter required for the construction of a station to any person (or to any person directly or indirectly controlled by such person) whose license has been revoked by a court under this section.

PRESERVATION OF COMPETITION IN COMMERCE

SEC. 314. After the effective date of this Act no person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire energy, communications, or signals by radio in accordance with the terms of the license issued under this Act, shall by purchase, lease, construction, or otherwise, directly or indirectly, acquire, own, control, or operate any cable or wire telegraph or telephone line or system between any place in any State, Territory, or possession of the United States or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share or any interest in the physical property and/or other assets of any such cable, wire, telegraph, or telephone line or system, if in either case the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce; nor shall any person engaged directly, or indirectly through any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such person, or through an agent, or otherwise, in the business of transmitting and/or receiving for hire messages by any cable, wire, telegraph, or telephone line or system (a) between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any other State, Territory, or possession of the United States; or (b) between any place in any State, Territory, or possession of the United States, or the District of Columbia, and any place in any foreign country, by purchase, lease, construction, or otherwise, directly or indirectly acquire, own, control,

or operate any station or the apparatus therein, or any system for transmitting and/or receiving radio communications or signals between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or shall acquire, own, or control any part of the stock or other capital share of any interest in the physical property and/or other assets of any such radio station, apparatus, or system, if in either case, the purpose is and/or the effect thereof may be to substantially lessen competition or to restrain commerce between any place in any State, Territory, or possession of the United States, or in the District of Columbia, and any place in any foreign country, or unlawfully to create monopoly in any line of commerce.

FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

SEC. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

- (1) bona fide newscast,
- (2) bona fide news interview,
- (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
- (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto),

shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

MODIFICATION BY COMMISSION OF CONSTRUCTION PERMITS OR LICENSES

SEC. 316. (a) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been

notified in writing of the proposed action and the grounds and reasons therefor, and shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue: *Provided*, That where safety of life or property is involved, the Commission may by order provide for a shorter period of notice.

(b) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

ANNOUNCEMENT WITH RESPECT TO CERTAIN MATTER BROADCAST

SEC. 317. (a)(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) In any case where a report has been made to a radio station, as required by section 508 of this Act, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience or necessity does not require the broadcasting of such announcement.

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

OPERATION OF TRANSMITTING APPARATUS

SEC. 318. The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued

hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: *Provided, however,* That the Commission if it shall find that the public interest, convenience, or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting (other than those engaged solely in the function of rebroadcasting the signals of television broadcast stations and (4) stations operated as common carriers on frequencies below thirty thousand kilocycles: *Provided further,* That the Commission shall have power to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices.

CONSTRUCTION PERMITS

SEC. 319. (a) No license shall be issued under the authority of this Act for the operation of any station the construction of which is begun or is continued after this Act takes effect, unless a permit for its construction has been granted by the Commission. The application for a construction permit shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant under oath or affirmation.

(b) Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.

(c) Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit. The provisions of section 309 (a), (b), (c), (d), (e), (f), and (g) shall not apply with respect to any station license the issuance of which is provided for and governed by the provisions of this subsection.

(d) A permit for construction shall not be required for Government stations, amateur stations, or mobile stations. With respect to stations or classes of stations other than Government stations, amateur stations, mobile stations, and broadcasting stations, the Commission may waive the requirement of a permit for construction if it finds that the public interest, convenience, or necessity would be served thereby: *Provided, however,* That such waiver shall apply only to stations whose construction is begun subsequent to the effective date of the waiver. If the Commission finds that the public interest, convenience, and necessity would be served thereby, it may waive the requirement of a permit for construction of a station that is engaged solely in rebroadcasting television signals if such station was constructed on or before the date of enactment of this sentence.

DESIGNATION OF STATIONS LIABLE TO INTERFERE WITH DISTRESS SIGNALS

SEC. 320. The Commission is authorized to designate from time to time radio stations the communications or signals of which, in its opinion, are liable to interfere with the transmission or reception of distress signals of ships. Such stations are required to keep a licensed radio operator listening in on the frequencies designated for signals of distress and radio communications relating thereto during the entire period the transmitter of such station is in operation.

DISTRESS SIGNALS AND COMMUNICATIONS

SEC. 321. (a) The transmitting set in a radio station on shipboard may be adjusted in such a manner as to produce a maximum of radiation, irrespective of the amount of interference which may thus be caused, when such station is sending radio communications or signals of distress and radio communications relating thereto.

(b) All radio stations, including Government stations and stations on board foreign vessels when within the territorial waters of the United States, shall give absolute priority to radio communications or signals relating to ships in distress; shall cease all sending on frequencies which will interfere with hearing a radio communication or signal of distress, and, except when engaged in answering or aiding the ship in distress, shall refrain from sending any radio communications or signals until there is assurance that no interference will be caused with the radio communications or signals relating thereto, and shall assist the vessel in distress, so far as possible, by complying with its instructions.

INTERCOMMUNICATION IN MOBILE SERVICE

SEC. 322. Every land station open to general public service between the coast and vessels or aircraft at sea shall, within the scope of its normal operations, be bound to exchange radio communications or signals with any ship or aircraft station at sea; and each station on shipboard or aircraft at sea shall, within the scope of its normal operations, be bound to exchange radio communications or signals with any other station on shipboard or aircraft at sea or with any land station open to general public service between the coast and vessels or aircraft at sea: *Provided,* That such exchange of radio

communication shall be without distinction as to radio systems or instruments adopted by each station.

INTERFERENCE BETWEEN GOVERNMENT AND COMMERCIAL STATIONS

SEC. 323. (a) At all places where Government and private or commercial radio stations on land operate in such close proximity that interference with the work of Government stations cannot be avoided when they are operating simultaneously, such private or commercial stations as do interfere with the transmission or reception of radio communications or signals by the Government stations concerned shall not use their transmitters during the first fifteen minutes of each hour, local standard time.

(b) The Government stations for which the above-mentioned division of time is established shall transmit radio communications or signals only during the first fifteen minutes of each hour, local standard time, except in case of signals or radio communications relating to vessels in distress and vessel requests for information as to course, location, or compass direction.

USE OF MINIMUM POWER

SEC. 324. In all circumstances, except in case of radio communications or signals relating to vessels in distress, all radio stations, including those owned and operated by the United States, shall use the minimum amount of power necessary to carry out the communication desired.

FALSE DISTRESS SIGNALS; REBROADCASTING; STUDIOS OF FOREIGN STATIONS

SEC. 325. (a) No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

(b) No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.

(c) Such application shall contain such information as the Commission may by regulation prescribe, and the granting or refusal thereof shall be subject to the requirements of section 309 hereof with respect to applications for station licenses or renewal or modification thereof, and the license or permission so granted shall be revocable for false statements in the application so required or when the Commission, after hearings, shall find its continuation no longer in the public interest.

CENSORSHIP; INDECENT LANGUAGE

SEC. 326. Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

USE OF NAVAL STATIONS FOR COMMERCIAL MESSAGES

SEC. 327. The Secretary of the Navy is hereby authorized, unless restrained by international agreement, under the terms and conditions and at rates prescribed by him, which rates shall be just and reasonable, and which, upon complaint, shall be subject to review and revision by the Commission, to use all radio stations and apparatus, wherever located, owned by the United States and under the control of the Navy Department, (a) for the reception and transmission of press messages offered by any newspaper published in the United States, its Territories or possessions, or published by citizens of the United States in foreign countries, or by any press association of the United States, and (b) for the reception and transmission of private commercial messages between ships, between ship and shore, between localities in Alaska and between Alaska and the continental United States: *Provided*, That the rates fixed for the reception and transmission of all such messages, other than press messages between the Pacific coast of the United States, Hawaii, Alaska, Guam, American Samoa, and the Orient, and between the United States and the Virgin Islands, shall not be less than the rates charged by privately owned and operated stations for like messages and service: *Provided further*, That the right to use such stations for any of the purposes named in this section shall terminate and cease as between any countries or localities or between any locality and privately operated ships whenever privately owned and operated stations are capable of meeting the normal communication requirements between such countries or localities or between any locality and privately operated ships, and the Commission shall have notified the Secretary of the Navy thereof.

SPECIAL PROVISION AS TO CANAL ZONE

SEC. 328. This title shall not apply to the Canal Zone. In international radio matters the Canal Zone shall be represented by the Secretary of State.

ADMINISTRATION OF RADIO LAWS IN TERRITORIES AND POSSESSIONS

SEC. 329. The Commission is authorized to designate any officer or employee of any other department of the Government on duty in any Territory or possession of the United States to render therein such service in connection with the administration of this Act as the Commission may prescribe and also to designate any officer or employee of any other department of the Government to render such services at any place within the United States in connection with the administration of title III of this Act as may be necessary: *Provided*, That such designation shall be approved by the head of the department in which such person is employed.

PROHIBITION AGAINST SHIPMENT OF CERTAIN TELEVISION RECEIVERS

SEC. 330. (a) *No person shall ship in interstate commerce, or import from any foreign country into the United States, for sale or resale to the public, apparatus described in paragraph (s) of section 303 unless it complies with rules prescribed by the Commission pursuant to the authority granted by that paragraph: Provided, That this section shall not apply to carriers transporting such apparatus without trading in it.*

(b) *For the purposes of this section and section 303(s)—*

(1) *The term "interstate commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof which is within the United States, (B) commerce between points in the same State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States but through any place outside thereof, or (C) commerce wholly within the District of Columbia or any possession of the United States.*

(2) *The term "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States, but does not include the Canal Zone.*

